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Walter W. Jacobson, Sandra Williams and Brent T. Lynch v. State Land Board of the State of Utah. C. R. Henderson, M. v. Hatch, Walter G. Mann, Edward W. Clyde and C W. Thomson, As Members of the Salt Lake Board of the State of Utah : Respondents' Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

WALTER W. JACOBSON *et al.*,
Plaintiffs-Appellants,

— vs. —

STATE LAND BOARD OF THE
STATE OF UTAH *et al.*,
Defendants-Respondents.

FILED

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Case
Clerk, Supreme Court, Utah
No. 9401

RESPONDENTS' BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

WALTER W. JACOBSON, SANDRA
WILLIAMS and BRENT T. LYNCH,
Plaintiffs-Appellants,

— vs. —

STATE LAND BOARD OF THE STATE
OF UTAH, C. R. HENDERSON, M. V.
HATCH, WALTER G. MANN, ED-
WARD W. CLYDE and C. S. THOM-
SON, as members of the State Land
Board of the State of Utah; FRANK J.
ALLEN, Director of the State Land
Board of the State of Utah; ALBERT
C. MASSA, LESLIE B. TOMLEY,
BEN K. LERER, HARRY EDISON,
LOUIS B. MAYER, UPHEAVAL
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HEARST, H. C. McAULEY, VIRGINIA
C. WOLDEN, RALPH LOWE, FOR-
REST B. MILLER, PETRO-ATLAS
CORPORATION, SHELL OIL COM-
PANY, a corporation; ALTA LIND-
QUIST, C. S. WATTS, BERNARD C.
McGUIRE, FRANCIS M. RAYMOND,
EL PASO NATURAL GAS PROD-
UCTS COMPANY, a corporation, and
W. G. LASRICH,

Defendants - Respondents.

No. 9401
Case

RESPONDENTS' BRIEF

THE FACTS

Defendants (Respondents) do not controvert Plaintiffs' (Appellants) "Statement of Facts" other than in the particulars hereinafter specified. Defendants do, however, deem Plaintiffs' Statement of Facts to be incomplete and inadequate.

The State lease applications filed by Plaintiffs, hereinafter referred to as the "subject State applications," covered all or portions of 27 different so-called "school sections" — *i. e.* Sections 2, 16, 32, 36 — in 12 different townships. Such lands are hereinafter referred to as the "subject lands." Prior to the time the State acquired title to any of the subject lands, 37 United States oil and gas leases had been issued to Defendants under the Mineral Leasing Act of February 25, 1920, as amended (30 U. S. C. 181 ff.). Such leases are hereinafter referred to as the "subject Federal leases." As appears from the Findings of Fact and as will hereinbelow appear, there is no common denominator of facts in reference to all of the subject lands or in reference to all of the subject Federal leases. The several plats of survey covering the subject lands were approved at various dates. The dates of issuance of the several subject Federal leases vary (R. 69-86). Other particular facts and circumstances differ as to particular lands and as to particular subject Federal leases.

The pertinent facts are fully set forth in the Findings of Fact of the trial court (R. 27-35). In order that

such Findings may be conveniently available for reference, the complete Findings of Fact of the trial court are set forth in the Appendix hereof with inserted and italicized references to the Record supporting the several particular findings.

Plaintiffs offer no objection to or criticism of these Findings other than in respect to Finding No. XIII, their only comment being (Appl. Br. 13) :

“ In conclusion we respectfully submit that the District Court erred in making its Finding of Fact No. 13, which stated in substance that the State Land Board of Utah has not refused to exercise jurisdiction as to those of the subject lands, title to which has been acquired by the State.”

Plaintiffs do not undertake to dispute in any respect that the State Land Board did those particular things and took those particular actions which are referred to in Finding XIII. Plaintiffs do contend that what was done by the State Land Board represented a refusal on its part to “exercise jurisdiction” as to the subject lands.

In their Statement of Facts, Plaintiffs assert (Appl. Br. 3) that:

“ The lessees of the United States Government leases requested the five year extension of such leases from the United States Government and not the State of Utah after title to the lands had passed to the State of Utah (R. 49).”

As appears from the trial court's Finding X (*infra* p. a-8) and from the record, (R. 85, 77, 86, 92) the just quoted

statement is correct as to but four (SL-070497, U-050001, U-05660 and U-05661) of the 37 subject Federal leases involved in this matter. However, even in each of these four instances, the Request for Extension was filed with the Bureau of Land Management long before there had been any decision by the Bureau of Land Management determining that State title had attached to a portion of the leased lands and long prior to any notice in this respect to the lessee.

THE NATURE OF THE ACTION

Plaintiffs purport to ask that the State Land Board be required to take over the management and control of the lands described in their Complaint and the leasing thereof (R. 6).

What Plaintiffs really seek to have decided and declared is that the Utah State Land Board must manage and control the subject lands in a particular manner — that is, by refusing to recognize the oil and gas leases which Defendants hold and by issuing oil and gas leases to Plaintiffs.

Plaintiffs (Appl. Br. 4) assert that this “action does not try title nor the rights of any of the parties interested in the respective leases.”

In sharp contrast with that assertion is Plaintiffs' Point II which reads (Appl. Br. 7) :

“ The State became the owner of the property when the surveys were made and accepted by the Government.”

Like contradiction is found in Plaintiffs' Complaint wherein they allege that the lands therein described "became and now are the property of the State of Utah" (R. 5) and further allege that the State Land Board "erroneously and unlawfully deemed said lands to be covered by purported extensions of said United States Oil and Gas Leases, which extensions were purportedly issued and granted . . . at a time, or times, when said lands . . . were owned and possessed in fee simple by the said State of Utah." (R. 5-6)

It is indisputable that Plaintiffs are asking that the State Land Board shall be ordered to act upon the premises that the State acquired title to the subject lands, that it acquired such title at a particular time (namely when the subject lands were surveyed), that such acquisition of title by the State defeated the right of the defendant-lessees to 5-year extensions of their several leases and that the recognition of such extensions by the Bureau of Land Management and the State Land Board was erroneous and unlawful.

To do what Plaintiffs ask it to do, this Court must:

1. Determine that a writ of mandate may be used to compel the Utah State Land Board to reverse the rulings (R. 56-58) by which it acted upon and rejected Plaintiffs' oil and gas lease applications (R. 54-55) and to control the manner in which that Board shall exercise its discretion; and

2. Determine whether and when title to the respective sections of land referred to in the Complaint passed from the United States to the State of Utah; and
3. Determine that the Act of April 22, 1954 (65 Stat. 57) (commonly referred to as the "First Dawson Act"), amended by the Act of July 11, 1956 (43 U. S. C. 870) (commonly referred to as the "Second Dawson Act"), was intended to amend and operated to amend the provisions of Section 17 (30 U. S. C. 226) of the Mineral Leasing Act relating to a 5-year extension of the lease term; and
4. Hold that such determinations may be made in an action to which the United States is not a party.

STATEMENT OF POINTS

- A. AS TO ANY SUBJECT LANDS, TITLE TO WHICH HAS VESTED IN THE STATE, THE STATE ACQUIRED TITLE SUBJECT TO THE THEN OUTSTANDING LEASE OR LEASES ENTERED INTO BY THE UNITED STATES AND SUCCEEDED "TO THE POSITION OF THE UNITED STATES AS LESSOR UNDER SUCH LEASE OR LEASES" AND NOT TO ANY OTHER OR DIFFERENT POSITION.
- B. THE UNITED STATES IS AN INDISPENSABLE PARTY TO THIS ACTION.

(1) *Plaintiffs would have this Court require the State Land Board to act upon the premise that title to certain school sections*

passed from the United States to the State of Utah at times different than the time when the Bureau of Land Management of the Department of the Interior held that title did pass.

(2) *Plaintiffs would have this Court require the State Land Board to act upon the premise that title to certain school sections passed from the United States to the State of Utah at specified times although there has been no determination by the Bureau of Land Management as to whether or when State title attached.*

(3) *Plaintiffs would have this Court require the State Land Board to act upon the premise that certain lands are the property of the State although the records of the Bureau of Land Management show that title thereto could not have passed to the State.*

(4) *The United States had a continuing interest under a Federal lease entered into by it as to all lands covered by the lease notwithstanding the fact that title to a portion of the leased lands passed to the State subject to such lease.*

C. THE RIGHT OF A DEFENDENT-LESSEE TO A 5-YEAR EXTENSION OF HIS SUBJECT FEDERAL LEASE WAS NOT AFFECTED BY THE FACT THAT PRIOR TO THE EXPIRATION OF THE INITIAL 5-YEAR TERM THE STATE ACQUIRED TITLE TO A PORTION OR ALL OF THE LANDS COVERED THEREBY.

D. AN EXTRAORDINARY WRIT MAY NOT BE USED TO COMPEL THE UTAH STATE LAND BOARD TO REVERSE DECISIONS MADE IN THE EXERCISE OF ITS DISCRETION.

ARGUMENT

- A. AS TO ANY SUBJECT LANDS, TITLE TO WHICH HAS VESTED IN THE STATE, THE STATE ACQUIRED TITLE SUBJECT TO THE THEN OUTSTANDING LEASE OR LEASES ENTERED INTO BY THE UNITED STATES AND SUCCEEDED "TO THE POSITION OF THE UNITED STATES AS LESSOR UNDER SUCH LEASE OR LEASES" AND NOT TO ANY OTHER OR DIFFERENT POSITION.

As their Point II Plaintiffs make the broad and inaccurate assertion that "The State became the owner of the property when surveys were made and accepted by the Government." (Appl. Br. 7) Any particular lands which are the subject of this action fall into one of these three classes:

- (1) Those lands as to which the record shows that the State never acquired title;
- (2) Those lands as to which there has been no determination as to whether or when State title vested; or
- (3) Those lands as to which the Bureau of Land Management has determined that title vested in the State.

In no instance did the Bureau of Land Management determine that State title vested when the survey was made and approved.

Plaintiffs conclude their Point II with the statement that "By the (Dawson) Act, the State not only became

the lessor in place of the Government, but also became owner of said property.” (Appl. Br. 9) Defendants have no quarrel with said concluding statement in so far as it relates to the lands which fall within Class 3 as above defined. Defendants do take sharp issue with Plaintiffs’ contention (Appl. Br. 10-11) that the vesting of State title operated to defeat the statutory right of a defendant-lessee to a 5-year extension of his lease.

In their Point II discussion, Plaintiffs state (Appl. Br. 8):

“ Under the stipulation of facts, there is no question but that four of the parcels of land set forth in plaintiffs’ complaint title passed to the State under the Act of July 11, 1956, before any application was made for an extension of these leases and after the primary five year term had expired. These leases are U-07312 (R. 82), U-05660 and U-05661 (R. 86), U-06730 (R. 86A).”

This statement is incorrect and contrary to the record.

As to U-07312, the lease was dated September 1, 1952, and the Request for Extension was filed June 4, 1957 — 86 days prior to the end of the initial 5-year term on August 31, 1957 (R. 82, 158). As to U-06730 (R. 86A), the lease was dated May 1, 1952, and the Request for Extension was filed April 22, 1957 — 9 days prior to the end of the initial 5-year term on April 30, 1957 (R. 86A, 156). There has not been in either of these instances any decision holding that State title has attached to any land covered thereby (R. 92).

As to U-05660 and U-05661, the respective leases were dated December 1, 1951, and the respective Requests for Extension were filed November 13, 1956 — 17 days prior to the end of the initial 5-year term on November 30, 1956 (R. 86, 151). As to U-05660, it was not until May 27, 1958, and as to U-05661, it was not until November 6, 1957, that the Bureau of Land Management issued a decision holding that State title attached to part of the lands covered (R. 92).

Background of the Dawson Acts.

Under the Enabling Act of July 16, 1894 (28 Stat. 107), Congress granted to the State of Utah in aid of common schools, sections numbered 2, 16, 32 and 36 in each township of the public domain. In the case of *United States v. Sweet*, 245 U. S. 563; 38 S. Ct. 193; 62 L. Ed. 473, the United States Supreme Court held that the land grant did not extend to lands which were known to be mineral in character at the date title otherwise would have vested in the State of Utah; that title vested in the State as of January 4, 1896, as to then surveyed lands which were not then known to be mineral in character, and on the date of acceptance of survey as to lands not known to be mineral in character if the lands were unsurveyed at the time Utah was admitted into the Union; and also that title would not vest in the State as to land embraced in any Indian, military or other withdrawal or reservation or if rights of third parties had attached to the land prior to acceptance of the survey.

By the Act of January 25, 1927 (44 Stat. 1026 as amended, 43 U. S. C. §870), Congress extended the land grants in aid of common schools to:

“embrace numbered school sections mineral in character, unless land has been granted to and/or selected by and certified or approved, to any such State as indemnity for or in lieu of any land so granted by numbered sections.”

The 1927 Act specifically declared that:

“any lands within the limits of existing reservations of or by the United States, or specifically reserved for water power purposes, . . . or included in any valid application, claim or right initiated or held under any of the existing laws of the United States, unless or until such application, claim or right is relinquished or cancelled, . . . *are excluded from the provisions of this act.*” (Emphasis added.)

This 1927 statute was adopted nearly 7 years after the enactment of the Mineral Leasing Act of February 25, 1920 (41 Stat. 437; 30 U. S. C. 181 ff.). If lands which would otherwise become “school sections” upon the acceptance of the survey plats (2, 16, 32 or 36) were covered by an outstanding oil and gas lease or other Federal mineral lease or prospecting permit or a pending application therefor, at the time of acceptance of the survey plat, title could not vest in the State until the expiration or termination of such lease or permit. If lands so leased proved to be productive, the oil and gas or other minerals might be extracted from the lands before title passed to the State. The effects of this situation were multiplied by

delay in government surveys, in consequence of which delay millions of acres in Utah remained unsurveyed. A program was ultimately worked out between the State officials and the officials of the United States Department of the Interior for survey of township boundaries and of school sections (2, 16, 32 and 36) to accelerate the vesting of title to school sections in the State. Even before this program of "skeleton surveys" was conceived, many thousands of acres of land had been covered by oil and gas leases. Consequently, the State of Utah particularly was faced with the prospect of acquiring title to mineral school sections at some time in the future *after* the oil or other mineral resources may have been substantially depleted.

The "Dawson Acts" were directed to this situation.

First and Second Dawson Acts.

The provisions of the First and Second Dawson Acts are set out and may be compared in the quotation which follows. In this quotation, words which were included in the First Dawson Act of April 22, 1954, but which were omitted in the Second Dawson Act of July 11, 1956, are bracketed. Words which appeared in the Second Dawson Act but not in the First Dawson Act are underscored.

"(d) (1) Notwithstanding subsection (c), the fact that there is outstanding on any numbered [mineral] school section, whether or not mineral in character, at the time of its survey a mineral lease or leases entered into by the United States, or an application therefor, shall not prevent the grant of such numbered [mineral] school section

to the State concerned as provided [in] by this Act.

“(2) Any such numbered [mineral] school section which has been surveyed prior to the date of [the enactment of this subsection] approval of this amendment, and which has not been granted to the State concerned solely by reason of the fact that there was outstanding on it at the time of the survey a mineral lease or leases entered into by the United States, or an application therefor, is hereby granted by the United States to such State under this section as if it had not been so leased; and the State shall succeed [to] the position of the United States as lessor under such lease or leases.

“(3) Any such numbered [mineral] school section which is surveyed on or after the date of [the enactment of this subsection] approval of this amendment and on which there is outstanding at the time of such survey a mineral lease or leases entered into by the United States, shall (unless excluded from the provisions of this section by subsection (c) for a reason other than the existence of an outstanding lease) be granted to the State concerned immediately upon completion of such survey; and the State shall succeed to the position of the United States as lessor under such lease or leases.

“(4) The Secretary of the Interior shall, upon application by a State, issue patents to the State for the lands granted by this Act, in accordance with the Act of June 12, 1934 (48 Stat. 1185, 43 U.S.C. 871a). Such patent shall, if the lease is then outstanding, include a statement that the State

succeeded to the position of the United States as lessor at the time the title vested in the State.

“(5) Where at the time rents, royalties, and bonuses accrue [,] the lands or deposits covered by a single lease are owned in part by the State and in part by the United States, the rents, royalties, and bonuses shall be allocated between them in proportion to the acreage in said lease owned by each.

“(6) As used in this subsection, ‘lease’ includes ‘permit’ and ‘lessor’ includes ‘grantor’.”

The First Dawson Act was, by its terms, limited in application to numbered “*mineral*” school sections. With the possible exception of Sections 2 and 32 of T. 40 S., R. 19 E., there is no evidence that any of the subject lands were known on July 11, 1956, or at any time prior to or subsequent to that time, to be mineral in character or known to be valuable for mineral (Finding VI, *infra* p. a-5).

In the House Report (1956 U. S. Code, Congressional and Administrative News, Vol. 2, page 3111, 3112) on the bill which became the Second Dawson Act, it is stated:

“ It is the opinion of the Solicitor of the Department of the Interior that the term ‘numbered mineral section,’ as used in the 1954 act, does not permit title to numbered school sections to be passed to the State where such lands are included in non-competitive mineral leases or prospecting permits unless they are subsequently determined to be mineral in character either as the result of production therefrom or from land on the same geological structure or of their inclusion in the known

geological structure of a producing field as defined by the Geological Survey. Thus, due to the technical defect referred to in the 1954 act, a State may obtain title to school section lands known to be valuable for minerals and included in mineral leases but may not obtain title to school-section lands included in mineral leases and not known to be valuable for minerals."

Plaintiffs (Appl. Br. 8) state:

" There seems to be no question but that Congress intended by this act (First Dawson Act) to include both mineral and non-mineral land."

In sharp contrast the House Committee in the Report referred to above, stated:

" In short, while it may be argued from the committee and departmental report accompanying the bill which became the act of April 22, 1954, that the Congress intended that the broader grant (i. e., school sections known to be mineral in character and subject to a mineral lease) carry with it the lesser grant (i. e., school sections not known to be mineral in character but subject to a mineral lease or prospecting permit), the committee agrees that a plain reading of the existing law negates that intent."

In an opinion of February 7, 1957 (M-36408), addressed to the Director of the Bureau of Land Management by the Acting Associate Solicitor of the Department of the Interior, it is stated:

" The grant made by the act of April 22, 1954 (68 Stat. 57) does not apply to any school section, the plat of survey of which was accepted on or after July 11, 1956. The act of 1954 applies only to a

school section, surveyed before or after the act, which was known on the date of the acceptance of the plat of survey thereof if prior to the act of July 11, 1956, supra, or on April 22, 1954, which ever is the later date to be of mineral character, and then only where a mineral lease solely prevented from attaching to the section, the grant of mineral school sections made to a State by the act of January 25, 1927 (43 U.S.C. 870). The act of 1954 applies only to such mineral school sections, because the act of January 25, 1927, supra, which it amends, applies only to mineral school sections excepting non-mineral school sections coming within the scope of the other amendatory act of July 11, 1956 (70 Stat. 529). As a non-competitive, non-producing oil and gas lease covering a school section not on the geologic structure of a producing oil or gas field, standing alone, is not sufficient to warrant a mineral classification of the section, the act of April 22, 1954, supra, does not apply to such a section unless the mineral indications are such as to justify classifying the section as mineral in character. Neither is any other kind of non-competitive, non-producing and non-preference right mineral lease, standing alone, sufficient to justify such a classification of a school section. The failure to include in the grant made by the act of 1954 non-mineral school sections covered by mineral leases and to include mineral permits led to the passage of the act of July 11, 1956 (70 Stat. 529)."

It will be observed that both the First Dawson Act and the Second Dawson Act reiterate three times that where a mineral lease or leases entered into by the United States was outstanding at the time of attachment of State

title "the State shall succeed to the position of the United States under such lease or leases."

Plaintiffs contend that the State did *not* succeed to the position of the United States as lessor, but, rather, succeeded to some other and different position.

As lessor, the United States was obligated to recognize the rights of the respective Defendants in this action to extensions of their respective leases affected by this action. As lessor, the United States has fully recognized that obligation in approving the extension requests and in receiving rents and approving assignments. So likewise has the State of Utah, in so far as it has succeeded to the position of the United States as lessor, given recognition to the rights of extension and to the extensions in accepting rents (R. 49) and approving assignments (R. 88-90) and in rejecting Plaintiffs' lease applications (R. 56-68). This is the crux of Plaintiffs' plaint.

The Dawson Acts do not contain anything evidencing or even suggesting any intention of amending or altering any provision of the Mineral Leasing Act. The Dawson Acts do not purport to alter any terms of any existing lease or to abrogate any rights of the lessee under any existing lease.

Section 17 of the Mineral Leasing Act.

Section 17 of the Mineral Leasing Act as amended and in effect prior to September 2, 1960 (30 U. S. C. 226) included the following provisions:

“ Upon the expiration of the initial five-year term of any noncompetitive lease maintained in accordance with applicable statutory requirements and regulations, the record titleholder thereon shall be entitled to a single extension of the lease, unless then otherwise provided by law, for such lands covered by it as are not on the expiration date of the lease withdrawn from leasing under this section . . . No withdrawal shall be effective within the meaning of this section until ninety days after notice thereof shall be sent by registered mail, to each lessee to be affected by such withdrawal. A noncompetitive lease, as to lands not within the known geologic structures of a producing oil or gas field, shall be extended for a period of five years and so long thereafter as oil or gas is produced in paying quantities.”

These provisions were, by the Act of September 2, 1960 (78 Stat. 781) continued in effect as to any oil and gas lease issued prior to that date (30 U. S. C. 226-1(a)).

The basic premise of Plaintiffs, a premise rejected by the trial court, is that a holder of a Federal oil and gas lease which was issued prior to the acquisition of title by the State and which was outstanding at the time the State acquired title was, through the mere State acquisition of title, as to part of the leased lands, deprived as to such lands of the right to a 5-year extension under and in accordance with the provisions of the Mineral Leasing Act. Such premise is contrary to the position taken by the Bureau of Land Management as evidenced by its approval of the extension requests (R. 69-86A) and by the Bureau of Land Management letter and decisions set

forth at pages 179 through 189 of the Record in this cause. The Plaintiffs' premise is also contrary to the position taken by the Utah State Land Board (R. 56-68) and by the Attorney General of the State of Utah (R. 191-194); and is further evidenced by the position taken by the State Land Board in this action (R. 7-9).

B. THE UNITED STATES IS AN INDISPENSABLE PARTY TO THIS ACTION.

The United States is not a party to this action and could not be made a party without its consent. Contrary to Plaintiffs' Point I contention, Defendants assert that the United States is an indispensable party.

Monolith Portland Cement Company v. Gillbergh, 277 P. 2d 30, 34-36 (California, December 7, 1954) and cases cited therein.

South Kamas Irrigation Company v. Provo River Water Users' Association, 10 U. 2d 225, 350 P. 2d 851-853 (1960).

Plaintiffs contend that in respect to the several subject Federal leases there could be no 5-year extension as to the included school section lands *after* State title attached thereto. As vital, then, to Plaintiffs' position as determination of *whether* State title attached to a particular tract is determination of *when* title attached.

- (1) *Plaintiffs would have this Court require the State Land Board to act upon the premise that title to certain school sections passed from the United States to the State of Utah at times different than the time when the Bureau of Land Management of*

the Department of the Interior held that title did pass.

As to 16 of the 37 Federal oil and gas leases affected by this action, the 5-year extensions were both requested and were effective prior to the time (July 11, 1956) of the vesting of the State title to the school section lands included in such leases as such time has been determined by the Bureau of Land Management (Finding X, R. 33 *infra* (p. a-8)).

If Plaintiffs concede (and Defendants find no such concession) that State title did not attach to the school sections affected by these 16 leases, then obviously they will have, to this extent, conceded themselves out of court. If, on the other hand, Plaintiffs contend that the Bureau of Land Management decisions as to when State title attached are incorrect and that State title attached at some other and earlier date, then it is thus apparent that Plaintiffs are asking this Court to determine, without the presence of the United States, that State title attached at dates different to the date determined by the Bureau of Land Management. Can it be reasonably urged that the United States would not be a necessary party to such a determination?

The Federal government was entitled to all rentals which accrued prior to the date when State title attached and the accounting between the State and Federal governments has, as to the State acquired lands, been based upon the attaching of State title on July 11, 1956 (Finding IX, R. 32, *infra* p. a-7). If State title at-

tached earlier, the United States would owe to the State of Utah and the State Land Board would have the duty to demand rentals accruing between the date of such attachment and July 11, 1956. Should any determination from which this result would follow be made in an action to which the United States is not a party?

- (2) *Plaintiffs would have this Court require the State Land Board to act upon the premise that title to certain school sections passed from the United States to the State of Utah at specified times although there has been no determination by the Bureau of Land Management as to whether or when State title attached.*

As to 7 of the 37 subject Federal leases there has been no decision by the Bureau of Land Management as to whether or when State title attached to any of the subject lands included therein. Should this Court, in an action to which the United States is not a party, determine whether and when title passed from the United States to the State?

- (3) *Plaintiffs would have this Court require the State Land Board to act upon the premise that certain lands are the property of the State although the records of the Bureau of Land Management show that title thereto could not have passed to the State.*

As to 3 of the 37 subject Federal leases the State of Utah has never acquired title. The school section lands covered by these 3 leases were included in Power Site Reserve No. 42 prior to the time when State title would oth-

erwise have attached. This Power Site Reserve has never been revoked (Finding VII, R. 31, *infra*, p. a-5). As to another of the 37 subject Federal leases, 160 acres of the 640 acres involved were included in Power Site Classification No. 219 and was thus withdrawn before State title would otherwise have attached (Finding VIII, R. 31-32, *infra*, p. a-6). In one of the sections of subject land (Section 2, Township 40 South, Range 19 East), 61.48 acres are within Cigarette Springs Cave National Monument which was established before the section was surveyed. This 61.48-acre tract was even excluded from the subject Federal lease SL-070497 which was issued as to this section. (Finding III, *infra*, p. a-2, R. 93.)

If Plaintiffs concede that the State Land Board should not be required to "exercise jurisdiction" as to these withdrawn lands, they have not said so.

- (4) *The United States had a continuing interest under a Federal lease entered into by it as to all lands covered by the lease notwithstanding the fact that title to a portion of the leased lands passed to the State subject to such lease.*

As to 37 of the subject Federal leases all but 3 (U-04257, U-05000-A and U-013636) embraced lands in addition to so-called "school section lands" (R. 69-87, Finding VIII, R. 32, *infra*, p. a-6). As to such additional Federal lands, Plaintiffs must concede that there is no possible basis for assertion of State acquisition. This situation prevailed on and prior to July 11, 1956 and on the dates when the Defendants assert their 5-year ex-

ensions were effective and Plaintiffs claim they were not. When the United States issued a Federal oil and gas lease covering certain lands, that lease consisted of a single lease and that lease continued as a single lease at the time of the expiration of the original 5-year term and at the time of the filing of a request for the 5-year extension expressly provided for under the above quoted Section 17 of the Mineral Leasing Act (30 U. S. C. 226). The lease did not cease to be a single lease merely because the United States, the lessor, transferred title to a portion of the leased lands to the State of Utah.

A lessor who has granted an oil and gas lease cannot, by conveying a portion of the leased lands to another, make two leases out of a single lease and thereby diminish the lessee's rights or impose increased burdens upon the lessee.

“ Despite the statements to the contrary in *Standard Oil Co. v. Giller*, and *Cosden Oil Co. v. Scarborough*, under the ordinary oil and gas lease, the lessee's duties under the implied covenants, as well as his liabilities under the drilling and term clauses, are indivisible. The Lessee's duties of development relate to the whole of the land leased, and not to separate units. Neither the lessor nor the lessee, merely by dividing his interest, can in any way change these duties into duties to develop particular portions of the demised premises as individual units.” *Summers: The Law of Oil and Gas*, Vol. 3, Chap. 16, sec. 516, p. 443.

Any other rule would mean that the lessor, by dividing ownership of the leased lands, could impose upon

the lessee the necessity of having production from each of the divided portions in order to maintain the lease beyond the stated or so-called primary term of the lease. Any other rule would mean that the lessor, by dividing ownership of the leased lands, could impose upon the lessee the necessity of offset drilling as between one portion of the lands covered by the lease and another portion of the lands covered by this same lease. The courts have, of course, not countenanced any such a disregard of the rights of the lessee and obligations of the lessor under their lease contract.

It is clear from a reading of the First Dawson Act and of the Second Dawson Act that Congress contemplated that a lease would remain a single lease although the State acquired title to a portion of the leased lands.

Each of these Acts included the following provision:

“(5) Where, at the time rents, royalties, and bonuses accrue, the lands or deposits covered by a single lease are owned in part by the State and in part by the United States, the rents, royalties, and bonuses shall be allocated between them in proportion to the acreage in said lease owned by each.”

In discussing the effect of the Dawson Acts upon Federal oil and gas leases which included Federal lands as well as school section lands title to which vested in the State subsequent to the leasing, the Acting Director of the Bureau of Land Management, in a letter dated May 12, 1958, addressed to A. F. Barrett, President of the

Rocky Mountain Oil and Gas Association (R. 180-181)
stated, *inter alia*:

“ The regulations of 43 CFR, Parts 191 and 192 will govern these oil and gas leases the same as before, including extensions, renewals, unitization, etc., notwithstanding their ‘so-called’ segregation for administrative purposes. That would not affect any rights in the leased lands held by virtue of assignments or operating agreements. . . .

“ Considering the state lease as separate from the Federal lease will not create multiple drilling provisions. Production on either portion of the lease will operate to extend the lease in its entirety. Royalties on such production will be payable to the United States and to the State on the basis of the acreage in the lease owned by each, in the same manner as payment of annual rentals. The division of income from these leases is discussed in an opinion by the Associate Solicitor dated July 30, 1957 (M-36460),* a copy of which is enclosed for your convenience.

“ . . . *There is no authority in the law for segregating any outstanding leases into two separate and distinct leases, one covering the Federal lands and the other covering the State lands.*”
(Emphasis supplied.)

Particular attention is called to the Acting Director’s Decision of July 16, 1959 (R. 182-183) involving Oil and Gas Lease Serial U-05660, which is one of the Federal oil and gas leases affected by this action. That Decision includes the following:

“ The Manager’s decision is in accordance with these instructions and the law; however, it may be

*R. 187-189

stated that the lands are *considered* segregated into two categories *for purposes of administration* to aid in allocation of rents, royalties, and bonuses which accrue during the time the lands or deposits owned in part by the State and in part by the United States are covered by a single lease. It is only when the lease terminates in any manner in its entirety, or terminates or is assigned as to all of the State land, or as to all of the Federal land, that administration of it as a single lease under the provisions of subsection (d)(5) of the act of July 11, 1956, *supra*, ceases. See *Solicitor's Opinion*, M-36460 (July 30, 1957). As to the impairment of contractual rights under the lease, including lease extensions, the Solicitor held in discussing the lessee's right of relinquishment that the act of April 22, 1954 (68 Stat. 57), as amended by the act of July 11, 1956 (70 Stat. 529) does not in any way change the lessee's rights. M-36460 (July 30, 1957). It is incumbent upon the State to administer Federal leases which it is acquiring under the Dawson Act, *supra*, on the basis of the contractual provisions of each lease and the rules and regulations of the Secretary of the Interior, which form an integral part of the lease contract." (Emphasis supplied)

In his Decision of September 1, 1959 (R. 184-186) affecting Oil and Gas Lease U-02510, the Acting Director of the BLM stated:

“ * * * The ‘so-called’ segregation of the lease is for administrative purposes only, and the regulations contained in 43 CFR 191 and 192 will still govern such leases as to extensions, renewals, unitization, drilling provisions, etc. Assignments of interests will be filed with the agency having jurisdiction over the lands being assigned. Produ-

tion on either portion of the lease will serve to extend the lease in its entirety.

“ There is no statutory authority for the segregation of the lease into two separate distinct leases, one covering the land owned by the State, the other covering the Federal land. The outstanding lease will continue in full force and effect until terminated in any manner. Once the lease terminates, the State may issue a separate and distinct lease for the land under its jurisdiction, and in accordance with its own laws and regulations.

“ In a memorandum opinion, M-36460, dated July 30, 1957, the Associate Solicitor of the Department, in a construction of subsection (d)(5) of the Act of April 22, 1954, as amended *supra*, has determined that income from land embraced in such leases must be proportioned to the State and the United States on the basis of the acreage owned by each regardless of whether the lease is producing or non-producing and whether the producing well is located in the State or in the Federal land in the lease.”

The opinion addressed to Donald G. Prince, Land Examiner of the Utah State Land Board, under date of December 4, 1957, by the Assistant Attorney General of the State of Utah (R. 191-194) places the same interpretation as does the Bureau of Land Management upon the Dawson Acts.

Plaintiffs ask this Court to place upon the Dawson Acts an interpretation at variance with the language of these Acts, and contrary to the interpretation placed thereon by that agency of the Federal government charged with the administration of the public lands of

the United States, to the like interpretation placed thereon by that agency of the State of Utah charged with the administration of its lands, and to the like interpretation of the trial court. Plaintiffs do not cite either any language in the Dawson Acts or any authority whatsoever for the interpretation urged by them.

Each of the Dawson Acts provided that when the State acquired title to a school section it would "succeed to the position of the United States as lessor" under any previously issued and then outstanding Federal lease or leases which affected that school section. These Acts provided that the State would succeed to "*the position of the United States as lessor,*" *not* to some other and different position. How could the State be said to succeed to the position of the United States as lessor under a lease if the State of Utah is to occupy any different position than the United States in respect to the obligations of the lessor or the rights of the lessee under the law, the lease or the regulations?

Each subject Federal lease which covered lands a part of which became State owned not only remained, as do all of the leased lands, a single lease but the State was entitled under the lease to share in *any* production from the lease whether that production be from the State-owned portion of the leased lands or from the portion of the leased lands owned by the United States. It is equally clear that the United States was entitled under the lease to share in *any* production from the lease whether that production be from that portion of the leased premises

retained by the United States or from that portion of the leased premises which became State-owned.

This Court is asked by Plaintiffs to declare that the several subject Federal leases were not extended as to that part of the leased lands which passed to the State. To so hold would be to declare that a single lease was to suffer amputation. The United States would be a necessary party in any action which directly or by indirection undertakes to determine its rights under a lease issued by it and under which it is entitled to participate in the production from *all* of the leased lands, notwithstanding the fact that title to a portion of the leased lands may have passed to the State subject to the lease.

The United States is an indispensable party to this action.

C. THE RIGHT OF A DEFENDENT-LESSEE TO A 5-YEAR EXTENSION OF HIS SUBJECT FEDERAL LEASE WAS NOT AFFECTED BY THE FACT THAT PRIOR TO THE EXPIRATION OF THE INITIAL 5-YEAR TERM THE STATE ACQUIRED TITLE TO A PORTION OR ALL OF THE LANDS COVERED THEREBY.

As to any subject lands title to which vested in the State, the State took title under the Dawson Acts subject to the prior issued Federal lease and succeeded to the position of the United States as lessor under such lease. "The position of the United States as lessor" relates and must relate to the rights and obligations of the lessor and the corresponding obligations and rights of the lessee

under the lease, the Mineral Leasing Act and the applicable Mineral Leasing Act regulations. These rights and obligations find definition in the lease, the Mineral Leasing Act and such regulations. Plaintiffs would have this Court rewrite and redefine them.

Each subject Federal lease expressly provided that the lease was issued:

“... pursuant, and subject to *the terms and provisions of the Act of February 25, 1920 (41 Stat. 437) as amended . . . and to all reasonable regulations of the Secretary of the Interior* now or hereafter in force when not inconsistent with any expressed and specific provisions herein, which *are made a part hereof.*” (Emphasis supplied.)

The provisions of Section 17 of said Act relating to 5-year extensions have been hereinbefore quoted (*supra* p. 18).

In *Murphey v. McKay*, 233 F. 2d 697, 698; C. A. D. C. 1956, the court stated:

“ Under the non-competitive lease provisions of the Mineral Leasing Act of 1920, as amended in 1946, 30 U. S. C. A. §226, the record titleholder of a five-year oil and gas lease on public lands issued thereunder is entitled to a single extension thereof for a period of five years, provided he files an application therefor within 90 days before the expiration of the initial term.”

Plaintiffs state (Appl. Br. 11):

“ After title passes to the State, Section 17 of the Mineral Leasing Act would not control. The controlling provision would be 30 U. S. C. A., Section 189, . . . ”

Plaintiffs do not and cannot cite any authority whatever for that unfounded assumption. They merely quote 30 U. S. C. A. Section 189 and, following such quotation, state:

“ The provision just quoted covers Section 226 authorizing the extension of leases unless otherwise provided by law, and as stated in Section 189 it has been otherwise provided by law in relation to the rights of states.”

Section 189 states no such thing and is not, Defendants submit, susceptible of such distortion. Section 189 was enacted as Section 32 of the Mineral Leasing Act twenty-six years before the provision for 5-year extensions was first written into Section 17 of the Mineral Leasing Act by the Act of August 8, 1946 (60 Stat. 951) and thirty-four years before the First Dawson Act was enacted. The first sentence of Section 189 authorizes the Secretary of the Interior to make rules and regulations to accomplish the purposes of the Mineral Leasing Act. The second and final sentence of Section 189, as enacted, appears as a proviso reading:

“ Provided, That nothing in this Act shall be construed or held to affect the rights of the States or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property or assets of any lessee of the United States.”

In considering the purpose of that proviso, the United States Supreme Court, in *Mid-Northern Oil Co. v.*

Walker et al., 268 U. S. 45, 50; 45 S. Ct. 440, 441 (1925), stated:

“ No doubt what Congress immediately had in mind was the necessity of making it clear that, notwithstanding the interest of the government in the leased lands, the right of the states to tax improvements thereon and the output thereof should not be in doubt; but the intention likewise to save the authority of the states in respect to all other taxable things is made evident by the addition of the three general categories, ‘other rights, property or assets.’ We think the proviso plainly discloses the intention of Congress that persons and corporations contracting with the United States under the act, should not, for that reason, be exempt from any form of state taxation otherwise lawful.”

If, as Plaintiffs urge, acquisition of State title served to obliterate the provisions of Section 17 relating to a 5-year extension, it served to obliterate all other provisions of said Section 17 relating to the rights and obligations of the lessee and lessor. If such State acquisition of title served to obliterate Section 17, it served to obliterate as well all provisions of every section of the Mineral Leasing Act relating to rights or obligations under any prior issued Federal permit or lease, whether such permit or lease were issued for oil and gas or for coal, phosphate, sodium, potassium or oil shale. The Dawson Acts enable the State to step into the shoes of the United States as lessor but they do not contemplate that such shoes can be used to walk away from the obligations which the lease, the law and the regulations imposed upon the United States as lessor.

The significance and importance of this action extend not only to the 37 subject Federal leases here involved but to other Federal leases in respect to which the State, after issuance, has acquired or may acquire title to all or a portion of the leased lands. They relate not only to oil and gas leases but to leases or permits for other Leasing Act minerals. They relate not only to the extension provision in said Section 17 but to the numerous other sections of the Mineral Leasing Act providing for extension of leases and permits under specified circumstances and defining other statutory rights accorded to lessees or permittees under the Mineral Leasing Act.

D. AN EXTRAORDINARY WRIT MAY NOT BE USED TO COMPEL THE UTAH STATE LAND BOARD TO REVERSE DECISIONS MADE IN THE EXERCISE OF ITS DISCRETION.

Plaintiffs contend that the State Land Board should be disciplined by an extraordinary writ because the Board has allegedly “failed and neglected to assume the management and control of said lands and have refused to act upon the applications of the respective plaintiffs as set forth above, except to deny the same.” The stipulated facts clearly show that the State Land Board acted upon each of Plaintiffs’ oil and gas lease applications and rejected them (R. 56-68) — this for the reason that the State Land Board recognized and held that the lands applied for were subject to the prior issued and outstanding leases of Defendants. The State Land Board further has exercised management and control as to all of the subject lands as to which State title has attached

by accepting rents (R. 49) and royalties paid under the oil and gas leases which had been issued by the Bureau of Land Management prior to attachment of State title; and has also clearly shown to have exercised management by approving assignments (R. 88-90) which have been filed as to 21 of the 37 outstanding leases affected by this action.

That the State Land Board was not reluctant to exercise jurisdiction and manage and control those subject lands which the State acquired is further evidenced in its actions particularly referred to in Finding XIII (*infra* p. a-10) and in the stipulated facts (R. 195-197). Refusal by the State Land Board to disregard the prior issued Federal lease to which State ownership was subject was not refusal to exercise jurisdiction.

Plaintiffs actually seek, by asking for an extraordinary writ, to have this Court review and reverse the actions of the State Land Board on Plaintiffs' several lease applications. In the case of *Hathaway v. McConkie*, 85 Utah 21; 38 P. 2d 300, the Supreme Court of Utah said:

"... It is well established that a writ of mandate may be used to compel an inferior tribunal to act on a matter within its jurisdiction, but not to control its discretion while acting nor to reverse its judgment when made."

Plaintiffs assume that the State Land Board was required to issue leases to Plaintiffs. Sections 65-1-18 and 19, U. C. A. 1953, in effect at the time suit was filed, provided that the State Land Board *may* lease any por-

tion of the *unleased* lands of the State “for such royalty upon the product as the board may deem fair and in the interests of the State.” The State Land Board found that the lands covered by Plaintiffs’ applications were *not unleased* lands as far as the oil and gas was concerned.

Mandamus will not issue to compel performance of a discretionary act. *Street v. Fourth Judicial District Court*, 113 Utah 60; 191 P. 2d 153.

CONCLUSION

The length of this Brief stands in recognized contrast to the brevity of the Brief of Appellants. In that brevity is to be found disregard of the differing facts and circumstances which relate to the 27 particular sections of land here involved and 37 particular subject Federal leases. Unsupported assertions require less space than reasoned and authority-supported refutations. The length of this Brief is dictated by Defendants’ concept of their duty of adequate presentation.

When, as to any subject lands acquired under the Dawson Acts, the State succeeded to “the position of the United States as lessor” under any prior issued subject Federal lease, it did just what those Acts said, namely, succeeded to *the position of the United States* as lessor and not to any other or different position whatsoever. The respective extensions of the subject Federal leases were valid and effective. When the State Land Board rejected Plaintiffs’ subject State applications, it

did the only thing it could do properly. It could not properly issue oil and gas leases on lands already subject to oil and gas leases. As to those subject lands which the State acquired, the State Land Board's rejection of Plaintiffs' applications was not only an exercise of management and control, it was a *proper* exercise of management and control.

Defendants (Respondents) respectfully submit that the Findings of Fact of the trial court are fully supported by the Record; that the Conclusions of the trial court are correct and fully supported by the facts as found and by applicable law; that the judgment appealed from should be affirmed; and that Respondents should be awarded their costs incident to this appeal.

Respectfully submitted,

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APPENDIX

FINDINGS OF FACT

I

“ The respective Plaintiffs heretofore and in November and December, 1956, filed in the State Land Office of the State of Utah 21* certain applications for mineral (oil and gas) leases (*R. 46*). Hereinafter in these Findings and Conclusions said applications are referred to as the ‘subject State Applications’ and the State of Utah is referred to as the ‘State.’ Exhibit “1” (*R. 54-55*) attached to the Stipulation of Facts filed herein sets forth, as to each subject State Application, the name of the applicant (plaintiff) by whom filed, the mineral lease application (MLA) number assigned to said application by the State Land Office, the date of filing of said Application in the State Land Office and the description of the lands covered by said application. The lands covered by said 21 subject State applications are hereinafter in these Findings of Fact and Conclusions of Law collectively referred to as the ‘subject lands.’ The subject lands involve all or portions of 27 different so-called ‘school sections,’ (*i. e.* Sections 2, 16, 32 and 36) in 12 townships.

* MLA

6989	7004	15010	15047
6990	7005	15037	15056
6991	7006	15044	15062
7001	7007	15045	15063
7002	7033	15046	15066
7003			

II

“ Each of Plaintiffs is now and at the time of the filing of the subject State Applications filed by such Plaintiff and at all intervening times was a citizen of the United States, qualified to file applications for oil and gas leases from and to take oil and gas leases from the State. Each subject State Application was filed on the form and in the manner prescribed by the State Land Board of Utah for the filing of applications for oil and gas leases from the State (*R. 47*).

III

“ Prior to the time that the State acquired title to any of the subject lands, 37 United States Oil and Gas leases* (*R. 48, 69-87*) had been issued by the Bureau of Land Management of the Department of the Interior (hereinafter referred to as “BLM”) under the Mineral Leasing Act of February 25, 1920, as amended (30 U. S. C. 181 ff) hereinafter referred to as the ‘Mineral Leasing Act,’ covering (among other lands) all of the subject lands, except that portion (61.48 acres) in Sec-

* Serial

SL-070497	U-04304	U-04533	U-04925
SL-071028	U-04305	U-04637	U-05000-A
U-02661	U-04320	U-04679	U-05152
U-04106	U-04398	U-04684	U-05153
U-04107	U-04399	U-04685	U-05660
U-04108	U-04408	U-04686	U-05661
U-04257	U-04409	U-04687	U-06730
U-04258	U-04417	U-04688-A	U-07312
U-04259	U-04532	U-04922	U-013637
U-04302			

tion 2, T. 40 S., R. 19 E., which was on February 11, 1916, and prior to the survey thereof included within Cigarette Springs Cave National Monument as a result of a Presidential Proclamation of that date, and which remains so included (*R. 48, 85, 93*). These 37 United States oil and gas leases are hereinafter referred to as the 'subject Federal leases.' Exhibit "A" (*R. 69-86a*) attached to the Stipulation of Facts filed herein sets forth as to each subject Federal lease (*R. 48-49*) the name of the lessee, the date of the lease, the date of the filing of a request for a 5-year extension, the date of the approval of such request, the description of any Section 2, 16, 32 or 36 lands covered thereby, reference to the conflicting subject State application, the date of approval of the Plat of Survey of the particular township involved, and the withdrawals, if any, which had been made affecting the particular subject lands involved. As to each of the 37 subject Federal leases a request or application for a 5-year extension of the initial 5-year term of the lease (hereinafter referred to as a '5-year extension request') has been filed with and has been approved by the BLM (*R. 93-161*). As to 2 (U-06730 and U-07312) of the subject Federal leases, the initial 5-year term of the lease expired subsequent to the filing of the subject State applications (*R. 86a, 156, 157, 158*). As to the remainder of the subject Federal leases the initial 5-year term of the lease expired prior to the filing of the subject State applications.

IV

“ The State Land Board of Utah rejected each of the 21 subject State applications and by several letters, each dated January 20, 1958, advised the applicant that the application had, on January 6, 1958, in some instances, and on January 7, 1958, in the remaining instances, at a regular meeting of the State Land Board, been rejected as to the subject lands which were covered by such application; that the subject lands covered by the application were included in oil and gas leases issued by the United States (*R. 56-68*); and that the Attorney General of the State, in an opinion dated December 4, 1957 (*R. 191-194*), had ruled that the respective 5-year extensions of time granted by the United States on those respective leases issued by the United States were valid and should be recognized by the State.

V

“ By Executive Order of July 2, 1910, part of the subject lands, to-wit: Sections 2 and 32 of T. 40 S., R. 19 E., S. L. M., were withdrawn and reserved as part of Petroleum Reserve No. 7 (*R. 47*). By Public Land Order No. 1160 of June 6, 1955, said Executive Order of July 2, 1910, which had been made prior to the approval of the plat of survey of said township on March 28, 1912, was revoked as to said Sections 2 and 32. Prior to said Public Land Order of June 6, 1955, subject Federal leases SL-070497, U-02661, U-04637 and U-06730, had been issued. Said subject Federal leases SL-070497, U-02661, U-04637 and U-06730 embraced (among other lands) said

Section 32 and that portion of said Section 2 which is not within Cigarette Springs Cave National Monument (R 47-48).

.. Prior to the acceptance or approval by the BLM of the several plats of the United States surveys covering the subject lands other than the above mentioned Sections 2 and 32, the remaining 33 subject Federal leases which had been issued embrace (among other lands) all of such subject lands, other than said Sections 2 and 32 (R. 48).

VI

“ With the possible exception of Sections 2 and 32 of T. 40 S., R. 30 E.,* there is no evidence that any of the subject lands were known on July 11, 1956, or at any time prior to or subsequent to that time, to be mineral in character or known to be valuable for mineral.

VII

“ All of Section 36, T. 27 S., R. 17½ E. (being a portion of the lands covered by subject Federal lease U-05153 — R. 77) and the W. ½ of Section 32, T. 27 S., R. 18 E. (being a portion of the lands covered by subject Federal lease U-04320 — R. 78) and all of Section 2, T. 28 S., R. 17½ E. (being a portion of the lands covered by subject Federal leases U-05152 — R. 70 and U-05153 — R. 77) were included within Power Site Reserve No. 42 of July 2, 1910, prior to approval of the respective Plats

* “R. 30 E.” should read “R. 19 E.”
See Stipulation of Facts par. 4 (R. 47).

of Survey of said townships and remain so included (R. 87). The SW $\frac{1}{4}$ of Section 36, T. 39 S., R. 21 E., was included in Power Site Classification No. 219, effective February 26, 1929, prior to the approval of the plat of survey of said section and remains so included (R. 80).

VIII

“ As to one (U-04320) of the 37 subject Federal leases, the BLM has held that State title has never attached to any of the leased lands covered thereby by reason of pre-survey inclusion within Power Site Reserve No. 42 (R. 114). As to 7 (U-02661, U-04532, U-04637, U-05152, U-05153, U-06730, U-07312) of the 37 subject Federal leases, there had been no decision by the BLM as to whether or when State title attached to any of the subject lands covered thereby (R. 91-92, 97, 123-124, 127-128, 146-148, 149-150, 156-157, 158-160). Each of these 7 leases covered Federal lands in addition to the subject lands covered thereby (R. 85, 72, 78, 70, 77, 86a, 82).

“ As to the remaining 29 of the 37 subject Federal leases, the BLM has rendered decisions holding that State title attached to all or part of the subject lands covered by said respective leases on a specified date (R. 91-92). As to one (SL-070497-R. 85, 91, 94) of these 29 leases, title was held to have attached June 6, 1955, (the date of P. L. O. No. 1160) to that portion of the subject lands covered thereby, this by reason of the Act of April 22, 1954, (68 Stat. 57) commonly referred to as the ‘First Dawson Act.’ As to another (U-04688-A R. 80) of these 29

leases, State title was held by BLM decision to have attached July 11, 1956 (the date of the Act of July 11, 1956, (70 Stat. 529; 43 U. S. C. 870), commonly referred to as the 'Second Dawson Act') as to 480 acres of the 640 acres of subject lands covered thereby and to have never attached to the remaining 160 acres by reason of pre-survey inclusion within Power Site Classification No. 219 (*R. 80, 140*). As to the remaining 27 of these 29 leases, title to all of the subject lands covered thereby was held to have attached July 11, 1956, under the Second Dawson Act (*R. 91-92*).

" Of the above referred to 29 leases all but 3 (U-04257, U-05000-A, U-013637) at the times when the respective 5-year extension requests were filed, when State title attached to the subject lands covered by the respective leases, and when the respective BLM decisions were issued recognizing the extensions, embraced lands in addition to those which became State lands (*R. 69-86a*).

IX

" As to subject Federal lease SL-070497, the accounting of rentals as between the United States and the State was based upon the vesting of State title to the included school section lands on June 6, 1955. As to subject Federal lease U-04688-A, such accounting was based upon the vesting of State title to 480 acres of the 640 acres of included school section lands on July 11, 1956, the date of the Second Dawson Act (*R. 49, 50, 91, 92*). As to subject Federal lease U-04320, the BLM held that State title did not vest as to any of the leased lands (*R. 87, 91, 114*).

As to subject Federal leases U-02661, U-04532, U-04607, U-05152, U-05153, U-06730 and U-07312, it appears that there has been no BLM decision as to whether or when State title attached to any of the leased lands and consequently there has been no accounting between the United States and the State with respect thereto (*R. 91-92, 94, 123-124, 127-128, 146-148, 149-150, 156-157, 158-160*). As to the remaining 27 subject Federal leases, the accounting between the United States and the State of Utah as to rentals paid to the United States thereunder has been based upon the attaching of State title to the school section lands on July 11, 1956 (*R. 49-50, 91-92*).

X

“ As to one (U-04320) of the subject Federal leases, the BLM decision of May 6, 1958, held that State title did not attach to any of the leased lands — this by reason of pre-survey inclusion of the school section lands within Power Site Reserve No. 42 (*R. 87, 91, 114*). As to 2 others (U-05152 and U-05153 — *R. 70, 146-148, 77, 149-150, 87*) of the subject Federal leases, the same preclusion of attachment of State title is shown by the evidence to exist.

“ As to each of 16* of the subject Federal leases, the 5-year extension request had been filed and the requested extension was effective prior to the time (July 11, 1956) of the vesting of State title to a portion of the leased lands as thereafter determined in the applicable BLM decision.

* Lease	Record	Lease	Record	Lease	Record
SL-071028	.....74	U-04259	.....76	U-04399	.....84
U-04106	.....70	U-04302	.....81	U-04408	.....69
U-04107	.....69	U-04304	.....81	U-04409	.....74
U-04108	.....76	U-04305	.....82	U-04417	.....83
U-04257	.....71	U-04398	.....84	U-04533	.....73
U-04258	.....71				

As to each of 9* of the subject Federal leases the 5-year extension request had been filed with the Bureau of Land Management prior to the date when, according to later decisions of the Bureau of Land Management, the State acquired title to any of the leased land.

As to only 4 (SL-070497, U-05000-A, U-05660, U-05661) of the subject Federal leases with respect to which a BLM decision holds State title to have attached to the included subject lands, the 5-year extension request was filed with the BLM after the date of the vesting of State title as set forth in such decision (*R. 85, 77, 86, 91-92*).

In each instance, where there has been a BLM decision holding State title to have vested as to part or all of the leased lands, the 5-year extension requested was filed with and was approved by the BLM prior to the decision so holding and prior to any notification to the lessee under the subject Federal lease or to the State in respect to such attaching of State title (*R. 69-86a, 93-161*).

XI

Each subject Federal oil and gas lease expressly provides (*R. 162-178*) that the lease was issued:

“ pursuant, and subject to the terms and provisions of the Act of February 25, 1920 (41 Stat. 437) as amended and to all reasonable regulations of the Secretary of the Interior now or here-

Lease	Record	Lease	Record	Lease	Record
U-04679	79	U-04684	79	U-04685	73
U-04686	80	U-04687	83	U-04688-A	80
U-04922	75	U-04925	75	U-013637	72

after in force when not inconsistent with any expressed and specific provisions herein, which are made a part hereof.'

XII

" Each of the subject Federal leases was a noncompetitive lease and, at the expiration of the initial 5-year term thereof, had been maintained in accordance with applicable statutory requirements and regulations (R. 49). There is no evidence that any of the subject lands or other lands embraced within any subject lease were within the known geologic structure of a producing oil or gas field at the time of the expiration of the initial 5-year term thereof or at any time prior or subsequent thereto. There is no evidence that any of the subject lands or other lands embraced within any subject Federal lease have been included within any withdrawal from leasing at or prior to the expiration of the initial 5-year term thereof. As to each of the subject Federal leases, the 5-year extension request was filed in the Utah Land Office of the BLM by the record title holder of the lease within a period of 90 days prior to the expiration of the initial 5-year term thereof. As to each subject Federal lease, such 5-year extension request was approved by the BLM as to all of the lands covered thereby prior to any notice by the BLM to the lessee or to the State that State title had attached to any of the leased lands. (R. 69-860).

XIII

" The State Land Board of Utah has not refused to exercise jurisdiction as to those of the subject lands title

to which has been acquired by the State. The stipulated facts show that the State Land Board, in several instances, undertook, as to some of the subject lands, to exercise jurisdiction prematurely. In three instances, it undertook, before the enactment of the First Dawson Bill, to grant mineral leases on lands which were then and at the time of survey subject to prior issued and outstanding Federal leases (*R 195, items I (1), II (1) and (2)*). In 22 instances, it undertook to grant leases (*R. 195, items I (1) and (2), II (1) through (6), III (1) through (3) (5) (6) and (8) through (16)*) prior to the time (July 11, 1956) when the Bureau of Land Management held title to have attached to the affected State lands (*R. 191 192*). Subsequent to the vesting of title in the State, the State Land Board has exercised jurisdiction in collecting rents and in approving assignments on such of these prematurely issued leases as were not earlier cancelled. In 2 instances, the State Land Board has issued metalliferous minerals leases since State title vested (*R. 196, 197a, items III (4) and (7)*). The State Land Board has exercised jurisdiction in rejecting Plaintiff's applications, in receiving and accepting rentals as to the State lands covered by subject Federal oil and gas leases and in approving assignments as to 21 of the subject Federal oil and gas leases in so far as such assignments covered lands, title to which had been acquired by the State under the First Dawson Bill or Second Dawson Bill (*R. 88-90*).''